

Jun Xiang

From: Daniel Gitner
Sent: Friday, June 30, 2017 9:22 PM
To: Podolsky, Matthew (USANYS)
Cc: Zhou, David (USANYS); Jun Xiang; Samantha Reitz; Echenberg, Janis (USANYS); Boone, Robert (USANYS) 1
Subject: Re: US v. Percoco, et al.

If you are able to do so earlier it would be appreciated. We have waited a long time.

Thanks.

Dan

On Jun 30, 2017, at 9:13 PM, Podolsky, Matthew (USANYS) <Matthew.Podolsky@usdoj.gov> wrote:

Dan,

As discussed over the phone, we intend to provide a proposal Wednesday. I hope you enjoy the holiday weekend.

Many thanks,
Matt

From: Daniel Gitner [<mailto:dgitner@lswlaw.com>]
Sent: Friday, June 30, 2017 7:07 PM
To: Podolsky, Matthew (USANYS) <MPodolsky@usa.doj.gov>
Cc: Zhou, David (USANYS) <DZhou@usa.doj.gov>; Jun Xiang <jxiang@lswlaw.com>; Samantha Reitz <sreitz@lswlaw.com>; Echenberg, Janis (USANYS) <JEchenberg@usa.doj.gov>; Boone, Robert (USANYS) 1 <RBoone1@usa.doj.gov>
Subject: FW: US v. Percoco, et al.

Matt,

Since papers are due today, can we continue the conversation this weekend so we can hear the Government's proposal, or Monday at the latest?

Thanks,

Dan

Begin forwarded message:

From: Daniel Gitner <dgitner@lswlaw.com>
Date: June 22, 2017 at 10:50:20 AM EDT
To: "Podolsky, Matthew (USANYS)" <Matthew.Podolsky@usdoj.gov>
Cc: "Zhou, David (USANYS)" <David.Zhou@usdoj.gov>, Jun Xiang <jxiang@lswlaw.com>, Samantha Reitz <sreitz@lswlaw.com>, "Echenberg, Janis (USANYS)" <Janis.Echenberg@usdoj.gov>, "Boone, Robert (USANYS) 1" <Robert.Boone@usdoj.gov>, "Michael L. Yaeger" <michael.yaeger@srz.com>
Subject: Re: US v. Percoco, et al.

Matt,

I'm not sure we agree with your characterizations, but rather than engage in email back and forth we think it makes sense to have a quick call today. We just tried you. Are you available?

Dan

On Jun 21, 2017, at 11:08 PM, Podolsky, Matthew (USANYS) <Matthew.Podolsky@usdoj.gov> wrote:

Dan,

We expected to be able to share a proposal today but are not yet prepared to do so. We intend to provide a response to your proposed pretrial disclosure schedule in advance of filing our responsive motions, but likely not by first thing tomorrow morning. It is our view that the issue of pretrial schedules is closely connected to the pending motions, which, among other things, request various disclosures as well as severance, and to which our response is not due until June 30. In fairness, the defendants waited nearly 2 weeks before making a proposal after our call on May 31. If you would like to further explain the prejudice to your client, we can respond more directly.

Many thanks,
Matt

Matthew Podolsky
Assistant United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
(212) 637-1947

From: Daniel Gitner [<mailto:dgitner@lswlaw.com>]
Sent: Wednesday, June 21, 2017 10:07 PM
To: Zhou, David (USANYS) <DZhou@usa.doj.gov>
Cc: Jun Xiang <jxiang@lswlaw.com>; Samantha Reitz <sreitz@lswlaw.com>; Echenberg, Janis (USANYS) <JEchenberg@usa.doj.gov>; Boone, Robert (USANYS) 1 <RBoone1@usa.doj.gov>; Podolsky, Matthew (USANYS) <MPodolsky@usa.doj.gov>
Subject: Re: US v. Percoco, et al.

David,

We did not receive anything from the government today. Each day that goes by prejudices the defense with respect to this issue. I anticipate that the defense will seek the Court's assistance shortly if we do not hear from the government tonight or first thing in the morning.

Thank you,

Dan

On Jun 20, 2017, at 7:31 PM, Zhou, David (USANYS) <David.Zhou@usdoj.gov> wrote:

Hi Dan,

We anticipate providing you with our proposal tomorrow. Thanks.

Regards,
David

On Jun 19, 2017, at 5:40 PM, Daniel Gitner
<dgitner@lswlaw.com<<mailto:dgitner@lswlaw.com>>> wrote:

David, since timing is the issue, is there any chance we can get an answer today?
Thanks,

Dan

On Jun 16, 2017, at 3:53 PM, Zhou, David (USANYS)
<David.Zhou@usdoj.gov<<mailto:David.Zhou@usdoj.gov>>> wrote:

Hi Dan,

Thanks for your email. Let me circle up with my colleagues. We will make every effort
to respond to you soon.

Regards,
David

From: Daniel Gitner [<mailto:dgitner@lswlaw.com>]
Sent: Friday, June 16, 2017 3:41 PM
To: Zhou, David (USANYS) <DZhou@usa.doj.gov<<mailto:DZhou@usa.doj.gov>>>
Cc: Jun Xiang <jxiang@lswlaw.com<<mailto:jxiang@lswlaw.com>>>; Samantha Reitz
<sreitz@lswlaw.com<<mailto:sreitz@lswlaw.com>>>
Subject: Re: US v. Percoco, et al.

David,

Given the issue at stake, do you think the Government can commit to getting us an answer by early next week?

Thanks. Have a good weekend.

Dan

On Jun 13, 2017, at 11:26 AM, Zhou, David (USANYS) <David.Zhou@usdoj.gov<<mailto:David.Zhou@usdoj.gov>>> wrote:
Dan,

Thank you. We are considering your email and will respond as appropriate.

Regards,
David

From: Daniel Gitner [<mailto:dgitner@lswlaw.com>]
Sent: Monday, June 12, 2017 2:52 PM
To: Echenberg, Janis (USANYS) <JEchenberg@usa.doj.gov<<mailto:JEchenberg@usa.doj.gov>>>; Zhou, David (USANYS) <DZhou@usa.doj.gov<<mailto:DZhou@usa.doj.gov>>>; Podolsky, Matthew (USANYS) <MPodolsky@usa.doj.gov<<mailto:MPodolsky@usa.doj.gov>>>; Boone, Robert (USANYS) 1 <RBoone1@usa.doj.gov<<mailto:RBoone1@usa.doj.gov>>>
Cc: Barry.Bohrer@srz.com<<mailto:Barry.Bohrer@srz.com>>; Gladstein, Andrew <Andrew.Gladstein@srz.com<<mailto:Andrew.Gladstein@srz.com>>>; Yaeger, Michael <Michael.Yaeger@srz.com<<mailto:Michael.Yaeger@srz.com>>>; Milton Williams <mwilliams@wmhlaw.com<<mailto:mwilliams@wmhlaw.com>>>; Steve Coffey <scoffey@Oalaw.com<<mailto:scoffey@Oalaw.com>>>; Scott Iseman <siseman@Oalaw.com<<mailto:siseman@Oalaw.com>>>; Miller, Michael <mmiller@steptoe.com<<mailto:mmiller@steptoe.com>>>; Novack, Jeffrey <jnovack@steptoe.com<<mailto:jnovack@steptoe.com>>>; Herb Greenman <hgreenman@lglaw.com<<mailto:hgreenman@lglaw.com>>>; Hoover, Timothy <THoover@hodgsonruss.com<<mailto:THoover@hodgsonruss.com>>>; Masella, Jessica A. <Jessica.Masella@dlapiper.com<<mailto:Jessica.Masella@dlapiper.com>>>; Hillebrecht, John M. <John.Hillebrecht@dlapiper.com<<mailto:John.Hillebrecht@dlapiper.com>>>; Jun Xiang <jxiang@lswlaw.com<<mailto:jxiang@lswlaw.com>>>; Samantha Reitz <sreitz@lswlaw.com<<mailto:sreitz@lswlaw.com>>>; Terrence Connors

<tmc@connorsllp.com<<mailto:tmc@connorsllp.com>>>

Subject: US v. Percoco, et al.

Janis, Matt, David, and Robert,

We are following up on our call on May 31 regarding a proposed schedule in this case. Below we propose a schedule that would apply to a single trial or multiple trials. The schedule below is proposed on behalf of Messrs. Percoco, Kelly, Kaloyerous, Laipple, Ciminelli, Aiello and Gerardi.

At the April 6 conference, the Court recognized that severance motions would be made and—without prejudging those motions—set two trial dates, one on October 30, 2017 and one on January 8, 2018, in the event that severance might occur.

Since then, every defendant has moved for severance and made clear that multiple trials are appropriate. Moreover, counsel for the defendants who joined Mr. Percoco's April 4 letter to the Court (Mr. Percoco, Mr. Kelly, Mr. Aiello, and Mr. Gerardi) continue to believe that the earliest we can be ready for trial is in January 2018. Since that letter, we have received additional discovery material, and the Government has denied our requests for bills of particulars and Brady materials—all of which have increased our burden substantially.

Our proposed schedule is as follows:

1. The Government will produce its witness list, 3500 material, and exhibit list 90 days in advance of trial;
2. The Government will make Rule 404(b) notice 45 days before trial; and
3. The defense will make disclosures 7 days before trial.

In addition, on behalf of Mr. Kelly, Mr. Percoco, Mr. Aiello, and Mr. Gerardi, we emphasize that we believe that this schedule coupled with a January trial date is the minimum necessary to protect the defendants' due process right to a fair trial, their right to present a defense, and their right to effective assistance of counsel.

When we spoke on May 31 and I was the “spokesperson” for all defendants, we queried

whether the first production could occur at least 75 days before trial. That suggestion was made in connection with your statement that the material takes a long time to prepare. But taking into account today's date and your earlier comment that the Government needs only two and half or three months to be ready for trial, it appears that the Government can be ready on the schedule we are now suggesting. This is particularly true with respect to the January trial date, which provides the Government with more time to make the productions. Also, in light of Rule 16 production 18 (which was available to us early this month) of over 13,000 new Energy Company files (over 4,000 of which seem to have no meta-data), a production on the earliest possible schedule is even more essential.

We are amenable to a date by which the defense would respond to Government requests for stipulations. We did not include it in the proposed schedule because we were not sure how much time you wanted with respect to that.

We look forward to hearing from you.

Dan

Daniel M. Gitner
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dgitner@lswlaw.com<<mailto:dgitner@lswlaw.com>> |
www.lswlaw.com<<http://www.lswlaw.com>>

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